

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF TENNESSEE  
AT KNOXVILLE

RONDA J. JONES, )  
Plaintiff, )  
v. ) 3:11-CV-200  
MICHAEL J. ASTRUE, ) (VARLAN/GUYTON)  
Commissioner of Social Security, )  
Defendant. )

## **REPORT AND RECOMMENDATION**

This matter was referred to the undersigned pursuant to 28 U.S.C. § 636(b), Rule 72(b) of the Federal Rules of Civil Procedure, and the Rules of this Court for a report and recommendation regarding the disposition by the District Court of the plaintiff’s Motion For Summary Judgment [Doc. 10], and the defendant’s Motion For Summary Judgment. [Doc. 12]. Plaintiff Ronda Jones (“Jones”) seeks judicial review of the decision of the Administrative Law Judge (“ALJ”), the final decision of the defendant Commissioner.

## I. BACKGROUND

Plaintiff was 31 years of age when the ALJ issued the Decision in March, 2010 (Tr. 22, 127). Jones has a GED (Tr. 151). She has work experience as a certified nurse assistant, cashier, deli worker and truck driver (Tr. 154).

The Court has considered the medical evidence in the record, the testimony at the hearing, and all other evidence in the record. The medical history of the Plaintiff and the content of the ALJ's Decision have been set forth in the memoranda of the parties, are not in dispute [Doc. 11; Doc. 13], and need not be repeated here.

## **II. DISABILITY ELIGIBILITY**

To qualify for SSI benefits, plaintiff must file an application and be an "eligible individual" as defined in the Act. 42 U.S.C. § 1382(a); 20 C.F.R. § 416.202. An individual is eligible for SSI benefits on the basis of financial need and either age, blindness, or disability. See 42 U.S.C. § 1382(a).

"Disability" is the inability "[t]o engage in any substantial gainful activity by reason of any medically determinable physical or mental impairment which can be expected to result in death or which has lasted or can be expected to last for a continuous period of not less than twelve months." 42 U.S.C. § 1382c(a)(3)(A). An individual shall be determined to be under a disability only if his physical or mental impairment or impairments are of such severity that he is not only unable to do his previous work but cannot, considering his age, education, and work experience, engage in any other kind of substantial gainful work which exists in the national economy, regardless of whether such work exists in the immediate area in which he lives, or whether a specific job vacancy exists for him, or whether he would be hired if he applied for work. 42 U.S.C. § 1382c(a)(3)(B).

Disability is evaluated pursuant to a five-step analysis summarized as follows:

1. If claimant is doing substantial gainful activity, he is not disabled.

2. If claimant is not doing substantial gainful activity, his impairment must be severe before he can be found to be disabled.

3. If claimant is not doing substantial gainful activity and is suffering from a severe impairment that has lasted or is expected to last for a continuous period of at least twelve months, and his impairment meets or equals a listed impairment, claimant is presumed disabled without further inquiry.

4. If claimant's impairment does not prevent him from doing his past relevant work, he is not disabled.

5. Even if claimant's impairment does prevent him from doing his past relevant work, if other work exists in the national economy that accommodates his residual functional capacity and vocational factors (age, education, skills, etc.), he is not disabled

Walters v. Comm'r of Soc. Sec., 127 F.3d 525, 529 (6th Cir. 1997) (citing 20 C.F.R. § 404.1520).

Plaintiff bears the burden of proof at the first four steps. Walters, 127 F.3d at 529. The burden shifts to the Commissioner at step five. Id. At the fifth step, the Commissioner must prove that there is work available in the national economy that the claimant could perform. Her v. Comm'r of Soc. Sec., 203 F.3d 388, 391 (6th Cir. 1999) (citing Bowen v. Yuckert, 482 U.S. 137, 146 (1987)).

### **III. STANDARD OF REVIEW**

When reviewing the Commissioner's determination of whether an individual is disabled pursuant to 42 U.S.C. § 405(g), the Court is limited to determining "whether the ALJ applied the correct legal standards and whether the findings of the ALJ are supported by substantial evidence." Blakley v. Comm'r of Soc. Sec., 581 F.3d 399, 405 (6th Cir. 2009) (citing Key v. Callahan, 109 F.3d 270, 273 (6th Cir. 1997)). If the ALJ applied the correct legal standards and his findings are supported by substantial evidence in the record, his decision is conclusive and must be affirmed.

Warner v. Comm'r of Soc. Sec., 375 F.3d 387, 390 (6th Cir. 2004); 42 U.S.C. § 405(g). Substantial evidence is “more than a scintilla of evidence but less than a preponderance; it is such relevant evidence as a reasonable mind might accept as adequate to support a conclusion.” Rogers v. Comm'r of Soc. Sec., 486 F.3d 234, 241 (6th Cir. 2007) (quotation omitted); see also Richardson v. Perales, 402 U.S. 389, 401 (1971) (quoting Consol. Edison v. NLRB, 305 U.S. 197, 229 (1938)).

It is immaterial whether the record may also possess substantial evidence to support a different conclusion from that reached by the ALJ, or whether the reviewing judge may have decided the case differently. Crisp v. Sec'y of Health & Human Servs., 790 F.2d 450, 453 n.4 (6th Cir. 1986). The substantial evidence standard is intended to create a “zone of choice” within which the Commissioner can act, without the fear of court interference.” Buxton v. Halter, 246 F.3d 762, 773 (6th Cir. 2001) (quoting Mullen v. Bowen, 800 F.2d 535, 545 (6th Cir. 1986)). Therefore, the Court will not “try the case de novo, nor resolve conflicts in the evidence, nor decide questions of credibility.” Walters, 127 F.3d at 528.

In addition to reviewing the ALJ’s findings to determine whether they were supported by substantial evidence, the Court also reviews the ALJ’s decision to determine whether it was reached through application of the correct legal standards and in accordance with the procedure mandated by the regulations and rulings promulgated by the Commissioner. See Wilson v. Comm'r of Soc. Sec., 378 F.3d 541, 544 (6th Cir. 2004). The Court may, however, decline to reverse and remand the Commissioner’s determination if it finds that the ALJ’s procedural errors were harmless.

An ALJ’s violation of the Social Security Administration’s procedural rules is harmless and will not result in reversible error “absent a showing that the claimant has been prejudiced on the

merits or deprived of substantial rights because of the [ALJ]’s procedural lapses.” Wilson, 378 F.3d at 546-47. Thus, an ALJ’s procedural error is harmless if his ultimate decision was supported by substantial evidence *and* the error did not deprive the claimant of an important benefit or safeguard. See id. at 547.

On review, Plaintiff bears the burden of proving his entitlement to benefits. Boyes v. Sec’y. of Health & Human Servs., 46 F.3d 510, 512 (6th Cir. 1994) (citing Halsey v. Richardson, 441 F.2d 1230 (6th Cir. 1971)).

#### **IV. POSITIONS OF THE PARTIES**

Jones alleges that she has been disabled and unable to work since May 27, 2008. However, she also says that she stopped working three months earlier, in February, 2008, when she was fired from her job (Tr. 143). Jones says that back pain and stiffness are too severe for her to be able to work, and also that anxiety and depression prevents her from working.

The ALJ found a residual functional capacity (RFC) of medium exertion work, except that: Plaintiff is limited to simple, routine repetitive work that does not require climbing ropes, ladders, scaffolds, and no exposure to fumes, and “that deals with things rather than people.” (Tr. 19). The independent medical expert who testified at the hearing, Dr. Dosett, supported the ALJ’s finding. Dr. Dosett testified that the Plaintiff’s back pain symptoms are “more based on her weight than any disk disease or anything of that sort.” Moreover, Dr. Dosett ascribed Plaintiff’s occasional breathing problems to her cigarette smoking, along with her weight<sup>1</sup> (Tr. 42-43). The ALJ found that the

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<sup>1</sup>Plaintiff reported being 5'5" and weighing 285 lbs. (Tr. 142).

Plaintiff did not have disabling mental limitations. Based on this RFC, and other appropriate factors specific to Plaintiff, the vocational expert testified that there were jobs in significant numbers in the national economy which the Plaintiff could perform (Tr. 45-48).

The Commissioner asserts that substantial evidence supports the RFC found by the ALJ, and the ALJ's conclusion of not disabled.

### **The Objection To The ALJ'S RFC Finding**

The Court agrees with the Commissioner that Plaintiff's objection to the ALJ's RFC finding is limited to the issue of Plaintiff's alleged mental impairments (depression, anxiety) and their impact on her ability to perform work-related activities. Plaintiff argues that the ALJ should have sent the Plaintiff for a consultative mental exam, because "no physician of record has offered an opinion" upon which the ALJ could base the RFC [Doc. 11].

The Court, however, agrees with the Commissioner that substantial evidence supports the ALJ's Decision on this issue.

The ALJ considered the Plaintiff's testimony, her activities of daily living, and the treatment records. The evidence shows that the Plaintiff's depression and anxiety were well-controlled by her medication (Tr. 20). Moreover, the medical record establishes that the Plaintiff continued to improve through treatment (Tr. 20).

The ALJ in this case clearly did not see the need to obtain a consultative mental examination, and the undersigned finds no error in that judgment. An ALJ need obtain a consultative examination only if additional information is needed to render a decision. See 20 C.F.R. §§404.1517, 416.917.

Wherefore, the Court finds that substantial evidence supports the ALJ's Decision in this case.

It is **RECOMMENDED** that the Plaintiff's Motion For Summary Judgment [Doc. 10] be **DENIED** and that the Defendant's Motion For Summary Judgment [Doc. 12] be **GRANTED**.<sup>2</sup>

Respectfully submitted,

s/ H. Bruce Guyton  
United States Magistrate Judge

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<sup>2</sup>Any objections to this Report and Recommendation must be served and filed within fourteen (14) days after service of a copy of this recommended disposition on the objecting party. Such objections must conform to the requirements of Rule 72(b), Federal Rules of Civil Procedure. Failure to file objections within the time specified waives the right to appeal the District Court's order. Thomas v. Arn, 474 U.S. 140, 106 S. Ct. 466 (1985). The district court need not provide de novo review where objections to this report and recommendation are frivolous, conclusive or general. Mira v. Marshall, 806 F.2d 636 (6th Cir. 1986). Only specific objections are reserved for appellate review. Smith v. Detroit Federation of Teachers, 829 F.2d 1370 (6th Cir. 1987).